UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF RHODE ISLAND

VICTOR WILBERT and STEPHEN WILBERT Plaintiffs	)	
v.	)	
	)	C.A. No. 97-338L
UNUM LIFE INSURANCE COMPANY Defendant	)	

DECISION AND ORDER

Ronald R. Lagueux, Chief Judge.

Victor Wilbert and Stephen Wilbert purchased disability insurance coverage in 1986 from the company now called UNUM Life Insurance Company of America, Inc. ("UNUM"). To form the insurance contract, the Wilberts ("plaintiffs") signed and submitted applications and UNUM issued policy documents (the "Policies"). Initially premiums were payable annually, although within months, plaintiffs elected to have premiums become due in advance of each three-month policy period.

The Policies contained clear language that if premiums were not paid, there was a 31-day grace period after the start of the three-month period. After the grace period ended, coverage would lapse. UNUM would, however, reinstate coverage without evidence of current insurability if it received premiums within 62 days of

the premium due date. After that, coverage would be terminated.

Over the years, UNUM received and cashed checks from plaintiffs' employer, Scope Display and Box Co., Inc, a small company owned and controlled by them. The last premium checks received were dated July 1, 1994, and they were aplied to the period ending August 27, 1994. There is a non-material dispute about whether the checks were actually prepayment through November, 1994, but it is undisputed that they were the last payments UNUM received. According to UNUM, coverage lapsed August 27, 1994 and the policies were later terminated because of non-payment of premiums.

Plaintiffs bring this lawsuit, seeking to reinstate the coverage. They allege that UNUM had a duty, either through the insurance contract or their long standing reliance on premium notices, to provide notice when premium payments were due. Because plaintiffs did not receive such notices (they allege), they did not pay their debts, and without providing further notices, UNUM could not terminate the policies.

The case is before this Court on UNUM's motion for summary judgment. It argues two theories. First, it claims that it owed no duty to send premium notices to plaintiffs, and therefore, it correctly terminated the coverage. Second, it claims that if it owed the duty, then its business records and affidavits are sufficient evidence to create a presumption that it mailed notice

to plaintiffs. Thus plaintiffs must either defeat that presumption or lose their claims. In objection to the motion, plaintiffs argue that the Policies' language requires the notice and that delivery of notice is a material fact that cannot be settled until trial.

For reasons outlined below, this Court agrees with UNUM that it owed no duty to provide notice to plaintiffs and grants its motion for summary judgment.

I. Legal Standard for Motion for Summary Judgment

Rule 56(c) of the Federal Rules of Civil Procedure sets forth the standard for ruling on summary judgment motions:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed. R. Civ. P. 56(c). Therefore, the critical inquiry is whether a genuine issue of material fact exists. "Material facts are those 'that might affect the outcome of the suit under the governing law.'" Morrissey v. Boston Five Cents Sav. Bank, 54 F.3d 27, 31 (1st Cir 1995) (quoting Anderson v. Liberty Lobby, Inc, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510 (1986)). "A dispute as to a material fact is genuine 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" Id.

On a motion for summary judgment, the Court must view all

evidence and related inferences in the light most favorable to the nonmoving party. See Continental Cas. Co. v. Canadian Universal Ins. Co., 924 F.2d 370, 373 (1st Cir. 1991). At the summary judgment stage, there is "no room for credibility determinations, no room for the measured weighing of conflicting evidence such as the trial process entails, no room for the judge to superimpose his own ideas of probability and likelihood." Greenburg v. Puerto Rico Maritime Shipping Auth., 835 F.2d 932, 936 (1st Cir. 1987). Similarly, "[s]ummary judgment is not appropriate merely because the facts offered by the moving party seem more plausible, or because the opponent is unlikely to prevail at trial." Gannon v. Narragansett Elec. Co., 777 F. Supp. 167, 169 (D.R.I. 1991).

II. UNUM Had No Duty To Send Premium Notices

The threshold issue before this Court is whether UNUM had a duty to provide plaintiffs with premium notices and, if so, whether UNUM provided such notices. Unless required by statute, regulation or contract, an insurer is not obligated to give notice of premiums due or give notice that coverage is being terminated because of unpaid premiums. See Pina v. Continental Cas. Co., 155 A. 659, 660 (R.I. 1931) (holding insurance contract that automatically voids coverage for nonpayment of premiums is valid); accord Presentation Sisters, Inc. v. Mutual Benefit Life Ins. Co., 189 N.W.2d 452, 455 (S.D. 1971); McFarland v. Farm

Bureau Mut. Auto. Ins. Co., 93 A.2d 551, 555 (Md. 1953). No Rhode Island statute or regulation requires UNUM to provide such notices, so plaintiffs' claim can only survive if the Policies so required.

The interpretation of unambiguous contract language is a matter of law to be decided by the court. See Newport Plaza Assocs. v. Durfee Attleboro Bank, 985 F.2d 640, 644-45 (1st Cir. 1993). This Court has explained that when a contract is clear and unambiguous on its face, the Court will enforce the contract as written. See Kelly v. Tillotson-Pearson, Inc., 840 F. Supp. 935, 944 (D.R.I. 1994) (citing Aetna Cas. & Sur. Co. v. Graziano, 587 A.2d 916, 917 (R.I. 1991)). The language of the Policies is clear that UNUM was not required to provide notice of premiums due.

The Policies place the burden on plaintiffs to pay premiums in a timely manner and provide that coverage will automatically terminate if payment is not received within the grace period:

> **Premiums**. Premiums are due in advance and, after the first, are payable as stated on page 3. Each premium will continue this policy for the term shown. If you do not pay a premium on or before its due date, we will keep this policy in force and continue coverage for 31 days beyond that date. This is a **grace period**. If you don't pay the premium during those 31 days, this policy and all coverage will terminate.
>
> If we accept your premium, we will continue coverage until the end of the period for which we accept the premium.

(See Policies at 5.) Rhode Island recognizes such policy provisions as valid and self-executing. Termination of coverage

due to non-payment of premiums "is a common provision in such policies which is fair and readily understood; by agreement of the parties it is made the basis and a condition precedent to the continuance of the liability of the insurer and it must be complied with in good faith by the insured." Pina, 155 A. at 660.

Plaintiffs rest their argument on Paragraphs 5a and 5b of the Health Insurance Application section of the Policies, which they say binds UNUM to mail premium notices before terminating the insurance. Because the application mentions premium notices and the actual policy documents do not, plaintiffs claim a contractual ambiguity.

There is no ambiguity. Paragraphs 5a and 5b do not bind UNUM to mail premium notices before terminating the insurance. These "paragraphs" are actually check-off blocks on an application. They ask, respectively, "Who will pay premiums -- employer or proposed insured?" and "Send premium notices to employer's address, residence address or other?" These are administrative questions and certainly provide no evidence that the parties contemplated that premium notices would be required before UNUM could cancel for non-payment. Just because UNUM asks where it should send premium notices does not mean that this commercial custom becomes a legal duty.

To read such a promise into the bare words of Paragraph 5b

is to depart from the common sense that plaintiffs cite in their memorandum. Certainly Paragraph 5a did not bind plaintiffs to have their employer pay the premium when they each checked the "Employer" box. If they had decided to pay the premiums personally, UNUM could not have claimed a breach of the contract.

UNUM issued a well-drafted contract with plain, direct language. Plaintiffs were obliged to pay their premiums before the period of coverage began. They enjoyed a 31-day grace period. Plaintiffs reliance on notices that they received in the past at their business and turned over to their only bookkeeper, (Pls.' Memo. In Support of Their Objection to Defendant's Mot. For Summ. J at 2), is specious. This did not create a contractual obligation on the part of UNUM. Plaintiffs claim that promissory estoppel applies here. That doctrine has been defined as:

> [a] promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.

Alix v. Alix, 497 A.2d 18, 21 (R.I. 1985) (citation omitted). First, UNUM's agreement to send notices to the employer's address could not reasonably be expected to limit its power to terminate for nonpayment. Second, even if plaintiffs depended in some way on receiving the notices, it would have been unreasonable to stop payments for an entire year (as they did) when they obviously

knew that premiums were due quarterly. Plaintiffs knew how the system worked. At least once before, the coverage had been terminated for non-payment, and the policies were reinstated after plaintiffs had the premiums paid. No injustice has been done here.

For the preceding reasons, defendant's motion for summary judgment is granted. The Clerk will enter judgment for defendant forthwith.

It is so Ordered.

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Ronald R. Lagueux
Chief Judge
November 6, 1998